

FCC MAIL STOP 104

Before the  
Federal Communications Commission  
Washington, D.C. 20554

In the Matter of

Telephone Number Portability

CC Docket No. 95-116

**ORDER****Adopted: January 13, 2004****Released: January 16, 2004**

By the Commission:

**I. INTRODUCTION**

1. In this order, we grant a limited waiver of the wireline-to-wireless porting requirement for certain local exchange carriers with fewer than two percent of the nation's subscriber lines in the aggregate nationwide (Two Percent Carriers)<sup>1</sup> that operate in the top 100 Metropolitan Statistical Areas (MSAs).<sup>2</sup> Specifically, we grant Two Percent Carriers that meet the conditions described in this order a waiver until May 24, 2004, to comply with the wireline-to-wireless porting requirement. The waiver applies to all Two Percent Carriers operating within the top 100 MSAs that had not received a request for local number porting from either a wireline carrier prior to May 24, 2003, or a wireless carrier that has a point of interconnection or numbering resources in the rate center where the customer's wireline number is provisioned (Covered Carriers). To the extent that a Two Percent Carrier operating within the top 100 MSAs does not meet these qualifications, it must comply with the requirements for wireline-to-wireless porting to date.

**II. BACKGROUND**

2. *Intermodal Portability.* Section 251(b) of the Communications Act of 1934, as amended (the Act) requires local exchange carriers (LECs) to provide local number portability (LNP), to the extent technically feasible, in accordance with requirements prescribed by the Commission.<sup>3</sup> Although the Act excludes Commercial Mobile Radio Service (CMRS) providers from the definition of local exchange carrier, and therefore from the section 251(b) obligation to provide number portability, the Commission has extended number portability requirements to CMRS providers.<sup>4</sup> The Commission determined that

<sup>1</sup> See 47 U.S.C. § 251(f)(2).

<sup>2</sup> The Commission received several petitions from small LECs operating in the top 100 MSAs for relief of the intermodal porting deadline of November 24, 2003. See Appendix A.

<sup>3</sup> 47 U.S.C. § 251(b)(2). Under the Act and the Commission's rules, local number portability is defined as "the ability of users of telecommunications services to retain, at the same location, existing telecommunications numbers without impairment of quality, reliability, or convenience when switching from one telecommunications carrier to another." 47 U.S.C. § 153(30); 47 C.F.R. § 52.21(k).

<sup>4</sup> Telephone Number Portability, CC Docket No. 95-116, First Report and Order and Further Notice of Proposed Rulemaking, 11 FCC Rcd 8352, 8431, paras. 152-53 (1996) (*First Report and Order*). The Commission indicated that it had independent authority under sections 1, 2, 4(i), and 332 of the Communications Act of 1934, as amended, to require CMRS carriers to provide number portability. *Id.* at para. 153. See 47 U.S.C. §§ 1, 2, 4(i), and 332.

implementation of wireless LNP, which would enable wireless subscribers to keep their phone numbers when changing carriers, would enhance competition between wireless carriers as well as promote competition between wireless and wireline carriers.<sup>5</sup>

3 After extending the wireless LNP deadline on several occasions, the Commission established November 24, 2003 as the date in which wireless carriers in the top 100 MSAs must be capable of wireless-to-wireless and wireless-to-wireline porting and wireline carriers must be capable of wireline-to-wireless porting. On November 10, 2003, we released a Memorandum Opinion and Order and Further Notice of Proposed Rule Making (*Intermodal Order*) further clarifying certain aspects of intermodal porting.<sup>6</sup> In the order, we recognized that many wireline carriers operating outside of the top 100 MSAs may require some additional time to prepare for implementation of intermodal portability.<sup>7</sup> Therefore, we waived, until May 24, 2004, the requirement that wireline carriers operating outside the top 100 MSAs port numbers to wireless carriers that do not have a point of interconnection or numbering resources in the rate center where the customer's wireline number is provisioned.<sup>8</sup>

4. *Petitions.* As the November 24, 2003 deadline approached, we received a number of petitions for waiver of the intermodal porting requirement (Waiver Petitions) from small LECs operating in the top 100 MSAs (Petitioners).<sup>9</sup> Nearly all of the Petitioners describe themselves as small telephone companies and assert that they are more similarly situated to LECs operating outside the top 100 MSAs than the large carriers operating within the top 100 MSAs.<sup>10</sup> In support of this claim, many of the Petitioners note that the intermodal porting requests that they received from CMRS providers were their first requests for any type of porting.<sup>11</sup> Because they had not previously received requests from other wireline carriers to make their systems LNP-capable, the Petitioners argue that they were at a technological disadvantage compared to most, if not all, of the larger LECs in their MSAs, which had already upgraded their systems to provide wireline-to-wireline porting. Therefore, the Petitioners request additional time to comply with the intermodal porting requirements, many requesting the same period given to LECs operating outside the top 100 MSAs.<sup>12</sup>

5. On November 21, 2003, the Independent Telephone and Telecommunications Alliance, the National Telecommunications Cooperation Association, and the Organization for the Promotion and Advancement of Small Telecommunications Companies (Joint Petitioners) filed an Emergency Joint Petition for Stay and Clarification (Joint Petition) requesting that the Commission stay application of the

<sup>5</sup> *First Report and Order* at 8434-36, paras. 157-160.

<sup>6</sup> Telephone Number Portability, CC Docket No. 95-116, Memorandum Opinion and Order and Further Notice of Proposed Rulemaking, FCC 03-284 (rel. Nov. 10, 2003) (*Intermodal Order*).

<sup>7</sup> *Intermodal Order* at para. 29.

<sup>8</sup> *Id.*

<sup>9</sup> See Appendix A. Sprint Corporation (Sprint) filed oppositions to five of these petitions and comments in support of one of the petitions. See Appendix B. Additionally, Northeast Florida and Valley filed reply comments to Sprint's oppositions to their petitions. *Id.*

<sup>10</sup> See, e.g., Northeast Florida Petition at 3; Yadkin Valley Petition at 2; OTELCO Petition at 2, MoKan Petition at 3.

<sup>11</sup> See, e.g., MoKan Petition at 4, Northeast Florida at 4, United Petition at 2-3; Blountsville Petition at 3-4.

<sup>12</sup> A number of the Petitioners also claim that it was unclear, until the November 10, 2003 *Intermodal Order*, whether they would have had to act on the requests from CMRS providers that do not have points of interconnection or numbering resources in the rate centers where the customers' wireline numbers are provisioned. These Petitioners state that, because the clarification occurred only two weeks before the November 24 deadline, it would be technologically and operationally impossible to become intermodal porting capable by November 24, even with the carriers taking reasonable efforts and acting in good faith.

*Intermodal Order* with respect to Two Percent Carriers until the Commission reconsiders and/or clarifies certain aspects of that decision.<sup>13</sup> Specifically, the Joint Petitioners assert that it is technically infeasible for Two Percent Carriers to comply with the November 24, 2003 deadline,<sup>14</sup> and that the interests of all the parties involved in the port request, including the consumer, will benefit from additional time for Two Percent Carriers to face the operational and network hurdles that must be overcome to achieve a smooth transition.<sup>15</sup> Moreover, the Joint Petitioners argue that Two Percent Carriers need additional time to become capable of wireline-to-wireless porting because many of them had never been requested to support wireline-to-wireline porting and were uncertain of their intermodal porting obligations until the release of the *Intermodal Order* two weeks before the November 24, 2003.<sup>16</sup>

6. *Waiver Standard.* The Commission may, on its own motion, waive its rules when good cause is demonstrated.<sup>17</sup> The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest.<sup>18</sup> In doing so, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.<sup>19</sup> Commission rules are presumed valid, however, and an applicant for waiver bears a heavy burden.<sup>20</sup> Waiver of the Commission's rules is therefore appropriate only if special circumstances warrant a deviation from the general rule, and such a deviation will serve the public interest.<sup>21</sup>

### III. DISCUSSION

7. We find that good cause exists to grant a waiver of the wireline-to-wireless porting requirement for Covered Carriers until May 24, 2004. Special circumstances exist for Covered Carriers because of the technological and operational limitations they face in implementing the necessary modifications to provide wireline-to-wireless porting. We also find that this additional time is consistent with the public interest. Therefore, we grant the Waiver Petitions and the Joint Petition, in part, to the extent consistent with this order, and otherwise deny them.

8. *Special Circumstances.* We find that special circumstances warrant a limited deviation from the November 24, 2003 deadline for Covered Carriers. Specifically, we recognize that the Covered Carriers' networks have technological limitations that cannot be resolved immediately to comply with the wireline-to-wireless porting requirement. The Joint Petitioners and most of the Petitioners assert that, unlike the large carriers serving within the Top 100 MSAs, a number of Two Percent Carriers in those markets had not received requests from other wireline carriers for wireline-to-wireline porting prior to

<sup>13</sup> Emergency Joint Petition for Stay and Clarification filed by the Independent Telephone and Telecommunications Alliance, the National Telecommunications Cooperation Association, and the Organization for the Promotion and Advancement of Small Telecommunications Companies, filed on November 21, 2003 (Joint Petition) at 22. See Appendix A. Sprint and Nextel Communications, Inc. opposed the Joint Petition. See Appendix B.

<sup>14</sup> Joint Petition at 4, 7, 12.

<sup>15</sup> *Id.* at 4.

<sup>16</sup> *Id.* at 7-11.

<sup>17</sup> 47 C.F.R. § 1.3; see also *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969), cert. denied, 409 U.S. 1027 (1972) (*WAIT Radio*).

<sup>18</sup> *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (*Northeast Cellular*).

<sup>19</sup> *WAIT Radio*, 418 F.2d at 1159, *Northeast Cellular*, 897 F.2d at 1166.

<sup>20</sup> *WAIT Radio*, 418 F.2d at 1157.

<sup>21</sup> *Id.* at 1159.

May 24, 2003<sup>22</sup> As a result, in order to offer intermodal portability to their subscribers, these smaller carriers must acquire the hardware and software necessary to provide porting, make the necessary network upgrades, and ensure that their upgraded networks work reliably and accurately.<sup>23</sup> Some of the Petitioners also assert that Two Percent Carriers often lack the experience and technical experience with number porting to quickly implement the necessary upgrades to their systems to ensure accurate porting.<sup>24</sup> Accordingly, we conclude that special circumstances exist to grant Two Percent Carriers who have not previously upgraded their systems to support LNP a limited amount of additional time to overcome the technological obstacles they face to successfully meet a request for wireline-to-wireless porting.<sup>25</sup> Such relief is also consistent with the relief we granted, in the *Intermodal Order*, to similarly situated wireline carriers operating outside the top 100 MSAs.<sup>26</sup>

9 *Public Interest.* We likewise find that the additional time is in the public interest for Covered Carriers to become capable of providing wireline-to-wireless porting. While we continue to deem rapid implementation of number portability to be in the public interest, we also believe it to be just as important that carriers implement and test the necessary system modifications to ensure reliability, accuracy, and efficiency in the porting process.<sup>27</sup> As we found with the waiver granted to wireline carriers outside the top 100 MSAs, a transition period for Covered Carriers will help ensure a smooth transition and provide Covered Carriers sufficient time to make necessary modifications to their systems.<sup>28</sup>

10. We also agree with the Petitioners that consumers will not likely be adversely impacted by the grant of an additional six months to these carriers. According to the Petitioners, many Two Percent Carriers had not received requests or even inquiries from their customers concerning their ability to port their wireline numbers,<sup>29</sup> and some carriers have devised temporary solutions to allow at least some of their customers to port their wireline numbers if they so desire.<sup>30</sup> Therefore, we anticipate that few customers will be adversely impacted by this limited waiver.

<sup>22</sup> See, e.g., MoKan Petition at 4, OTELCO Petition at 4, 8, Northeast Petition at 4; Blountsville Petition at 4, 9, Warwick Valley Petition at 4, 9; United Petition at 2-3, 7; YCOM Petition at 3, 8; Rio Virgin Petition at 3, 7; Egyptian Petition at 3, 8; Cascade Utilities Petition at 3, 7-8; and Laurel Highland Petition at 3, 7-8. See also Joint Petition at 7.

<sup>23</sup> See, e.g., Full Service Petition at 2. We note, however, that additional time is not necessary for Two Percent Carriers inside the top 100 MSAs that received a request to port a subscriber's number to another wireline carrier before May 24, 2003. These carriers would already have had to become LNP capable as of November 24, 2003, and therefore, would only need to make accommodations to provide wireline-to-wireless porting. Likewise, carriers would not need additional time for switches that are already LNP capable.

<sup>24</sup> See, e.g., MoKan Petition at 5; Northeast Florida at 5.

<sup>25</sup> See, e.g., MoKan Petition at 5; Northeast Florida at 5. In response to Sprint's oppositions, we note that Two Percent Carriers that were LNP capable as of November 24, 2003, or otherwise received a request from a wireless carrier that has a point of interconnection or numbering resources in the rate center where the customer's wireline number is provisioned, must continue to comply with the current requirements for wireline-to-wireless porting.

<sup>26</sup> *Intermodal Order* at para. 29.

<sup>27</sup> Joint Petition at 4, 18. See also MoKan Petition at 7 ("Without appropriate testing, there will be delays and errors in porting numbers, which is not in the best interest of the consumer or either carrier involved with the port.").

<sup>28</sup> *Intermodal Order* at para. 29.

<sup>29</sup> See, e.g., MoKan Petition at 6, Northeast Florida at 6.

<sup>30</sup> See, e.g., Full Service Petition at 3 (moving some of its customers from the outdated switch to UNE-P service which allows for number portability until a new switch that supports number portability is installed).

**APPENDIX B****OPPOSITIONS, COMMENTS, AND REPLY COMMENTS****Comments**

Sprint Corporation (Sprint) filed comments in support of Yadkin Valley Petition (November 26, 2003).

**Oppositions**

Sprint filed oppositions to the following petitions

- Bentleyville Petition (December 8, 2003)(\*\*);
- Joint Petition (December 10, 2003),
- Northeast Florida Petition (December 3, 2003);
- Valley Petition (December 8, 2003),
- Warwick Valley Petition (December 16, 2003), and
- YCOM Petition (December 10, 2003)

Nextel Communications, Inc. filed an ex parte opposing the Joint Petition (December 23, 2003).

**Reply Comments**

Northeast Florida filed reply comments to Sprint's opposition (December 10, 2003).

Valley filed reply comments to Sprint's opposition (December 18, 2003)

\*\* The Bentleyville Petition has been withdrawn pursuant to the petitioner's request See Telephone Number Portability, CC Docket No. 95-116, *Order*, DA 04-0069 (rel Jan 15, 2004)

APPENDIX A  
PETITIONERS (CON'T)

**Filed November 25, 2003**

Full Service Computing Corp. (Full Service)

**Filed December 11, 2003**

Green Hills Telephone Corporation (Green Hills)

\*\* The Bentleyville Petition has been withdrawn pursuant to the petitioner's request. *See* Telephone Number Portability, CC Docket No 95-116, *Order*, DA 04-0069 (rel. Jan 15, 2004).

## APPENDIX A

## PETITIONERS

**Filed September 24, 2003**

North Central Telephone Cooperative, Inc. (North Central) (supplemented petition on December 8, 2003)

**Filed November 20, 2003**

Yadkin Valley Telephone Membership Corporation (Yadkin Valley)

**Filed November 21, 2003**

Armstrong Telephone Company (Armstrong)

Bentleyville Telephone Company (Bentleyville) (\*\*)

Blountsville Telephone Co. (Blountsville)

Cascade Utilities, Inc. (Cascade Utilities)

Champaign Telephone Company (Champaign) (supplemented petition on December 19, 2003)

Chouteau Telephone Company (Chouteau)

East Ascension Telephone Company, LLC (East Ascension)

Egyptian Telephone Cooperative Association (Egyptian)

Ellensburg Telephone Company (Ellensburg)

Empire Telephone Corp. (Empire)

E.N.M.R. Telephone Cooperative (ENMR)

Independent Telephone and Telecommunications Alliance, the National Telecommunications  
Cooperation Association, and the Organization for the Promotion and Advancement of Small  
Telecommunications Companies (Joint Petitioners)

Laurel Highland Telephone Company (Laurel Highland)

Mariana and Scenery Hill Telephone Company (Mariana)

Middleburg Telephone Company (Middleburg)

MoKan Dial Telephone Company (MoKan)

Northeast Florida Telephone Company (Northeast Florida)

Orwell Telephone Company (Orwell)

OTELCO Telephone, LLC (OTELCO)

Pymatuning Telephone Company (Pymatuning)

Rio Virgin Telephone Co., Inc. (Rio Virgin)

State Telephone Co., Inc. (State)

Taconic Telephone Corp. (Taconic)

Tohono O'odham Utility Authority (Tohono)

United Telephone Company (United)

Valley Telephone Cooperative, Inc. (Valley)

Warwick Valley Telephone Company (Warwick Valley)

YCOM Networks, Inc. (YCOM)

**Filed November 24, 2003**

Eastern Slope Rural Telephone Association (Eastern Slope)

Peoples Telecommunications, LLC (Peoples)

Southern Kansas Telephone Company (Southern Kansas)

Wheat State Telephone, Inc. (Wheat State)

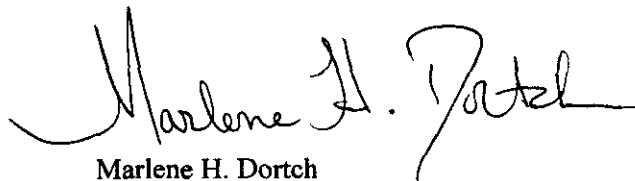
11. We disagree with Sprint's claim that such a waiver would relieve Covered Carriers of their obligations to provide wireline-to-wireless porting.<sup>31</sup> Rather the relief granted in this Order merely gives Covered Carriers additional time to overcome the technological and operations hurdles that large carriers in the top 100 MSAs did not face. Moreover, the waiver will not adversely impact rural customers because of its limited nature.

#### IV. ORDERING CLAUSE

12. Accordingly, IT IS ORDERED that, pursuant to authority contained in sections 1, 4(i), 251, and 332 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 251, 332, we GRANT a limited waiver of the wireline-to-wireless porting requirement, until May 24, 2004, for local exchange carriers with fewer than two percent of the nation's subscriber lines in the aggregate nationwide that operate in the top 100 Metropolitan Statistical Areas and have not received a request for local number porting from either a wireline carrier prior to May 24, 2003 or a wireless carrier that has a point of interconnection or numbering resources in the rate center where the customer's wireline number is provisioned.

13 IT IS FURTHER ORDERED, pursuant to authority contained in sections 1, 4(i), 251, and 332 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 251, 332, that the petitions listed in Appendix A to this Order ARE GRANTED IN PART AND DENIED IN PART, to the extent provided herein.

FEDERAL COMMUNICATIONS COMMISSION



Marlene H. Dortch  
Secretary

<sup>31</sup> See, e.g., Sprint Opposition to Bentleyville Petition at 1; Sprint Opposition to Valley Petition at 1-2; and Sprint Opposition to YCOM Petition at 1. See also, generally, Sprint Opposition to Northeast Florida Petition; Sprint Opposition to Warwick Valley Petition; and Sprint Opposition to Joint Petition.